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Supreme Court, U.S.
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No. 10-990

Supreme Court of the United States

STEPHEN J. WILLIAMS,

Petitioner,

vs.

FRANCIS J. FOLEY, III,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE WINDHAM GEOGRAPHIC AREA OF THE CONNECTICUT SUPERIOR COURT

SUPPLEMENTAL BRIEF OF PETITIONER

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ADDITIONAL QUESTION PRESENTED

A. Did the Clerk of this Court prevent Petitioner from receiving due process of law?

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STATEMENT OF THE CASE

A. Relevant proceedings in this Court

On 22 November 2010, Petitioner filed a petition for writ of certiorari entitled "Stephen J. Williams, Petitioner, v. Francis J. Foley, III, Respondent." Petitioner's petition sought a writ of certiorari directed to the Windham Geographic Area of the Connecticut Superior Court. On 3 February 2011, the Clerk docketed Petitioner's petition under the caption "Stephen J. Williams, Petitioner v. Connecticut". The Clerk's docket entry erroneously indicates that Petitioner sought certiorari against the State of Connecticut. The Clerk's docket entry did not indicate that Petitioner sought certiorari against the Honorable France J. Foley, III. The Clerk's docket entry also erroneously indicates that Petitioner sought certiorari directed towards the Connecticut Appellate Court when in fact Petitioner sought certiorari directed towards the Superior Court.[1]

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[1] Petitioner explained in his petition that "[the] petition [was] correctly captioned and the writ of certiorari, if issued, would be correctly directed to the Connecticut Superior Court See Sup.Ct.R 12 4, 12 6 and 14.1(b). See also Gressman, Geller, Shapiro, Bishop & Harnett, Supreme Court Practice, p 431 (9th ed , 2007), ('[C]ounsel is not bound by the caption used in the court below, counsel for the petitioner is free to clarify or improve it so as to portray accurately the adversary position of the contending parties before the Court') The caption in Connecticut's appellate courts was controlled by Conn Practice Book § 68-4 ('Cases brought to the supreme or appellate court otherwise than by writ of error shall be entitled as they were in the judgment of the trial court ') Judge Foley undertook his order to show cause under the heading of the ongoing criminal prosecution Whilst Petitioner challenged both the criminal

Petitioner immediately filed a motion in which he "ask[ed] that the Court order the Clerk of the Court to correct the docket to accurately reflect the petition filed by Petitioner Motion to Correct Ministerial Errors in the Docket, 5 February 2011, p. 4. Petitioner's motion complied in all respects with the Rules of the Court and therefore was required to be filed by the Clerk. Sup.Ct.R. 1.1. Nonetheless, the Clerk neither filed the motion nor returned it.

On 19 September 2006, the Connecticut Attorney General entered an appearance in the Connecticut Appellate Court in this case on behalf of Respondent. Petitioner immediately moved to disqualify the Attorney General. Motion to Disqualify Attorney General Richard Blumenthal as Counsel to Judge Francis J. Foley, III, 13 October 2006. The Attorney General responded by requesting that the Connecticut Judicial Branch assume responsibility for Respondent's legal defense. Disciplinary Counsel's Objection to Defendant/Appellant's Motion to Disqualify, 18 December 2006, p. 8. As a result, Martin Libbin, Deputy Director of the Legal Services Division of the judicial branch, instructed Connecticut's Office of the Chief Disciplinary

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conviction and his disciplinary suspension in the Connecticut courts, before this Court he now only challenges Judge Foley's suspension order. Furthermore, as neither the Connecticut Appellate Court nor the Connecticut Supreme Court considered the matter on its merits, the writ of certiorari must be directed to the Connecticut Superior Court. "The controlling principle is that the writ should be directed to the highest court of the state that actually ruled on the merits." Supreme Court Practice, p 439 See also *R J Reynolds Tobacco Co v Durham County, N C.*, 479 U S 130, 138-9 (1986) Here, the only court to rule on the merits was the Superior Court." Petition, p 11, footnote

Counsel to enter a substitute appearance on behalf of Judge Foley. Id. This was done. Appearance, 31 October 2006. Finally, the Appellate Court dismissed Petitioner's motion to disqualify "in light of the in lieu appearance filed on October 31, 2006, by the Office of the Chief Disciplinary Counsel." Appellate Court Order, 21 November 2006.

Despite this procedural history, Attorney Gregory T. D'Auria, who is Senior Appellate Counsel in the Office of the Connecticut Attorney General, filed an appearance in this Court "as Counsel or Record for all respondents". D'Auria Appearance & Waiver, 16 February 2011.[2]

Petitioner immediately filed a motion asking that the Court strike Attorney D'Auria's appearance. Motion to Strike Appearance and Waiver, 19 February 2011. This motion also complied in all respects with the Rules of the Court. Nonetheless, the Clerk neither filed the motion nor rejected it.

One day after filing Petitioner's Motion to Strike, Petitioner sent Attorney D'Auria the following by email:

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[2] Petitioner emailed Attorney D'Auria asking who specifically he represented Emails, Williams to D'Auria, 17 February 2011 Attorney D'Auria responded "I understand there to be only one respondent Judge Foley So I represent him" Id Nonetheless, Senior Assistant State's Attorney Michele Lukban has also filed an appearance in this proceeding on behalf of the Office of the Chief State's Attorney who was not a party in the state courts and is not a party to this proceeding Lukban Appearance & Waiver, 17 February 2011 Notably, Ms. Lukban's Waiver was also served upon Attorney Libbin Id

> Interestingly, I also received an appearance & waiver yesterday from SASA Michele Lukban on behalf of the Chief State's Attorney. Apparently, she does not share your view that the only respondent to this proceeding is Judge Francis Foley.
>
> I personally found it especially interesting that Atty. Lukban felt it necessary to copy her appearance to Deputy Director Martin Libbin even though he is supposedly not a party in this proceeding.
>
> When Chief Disciplinary Counsel Mark DuBois filed his appearance on behalf of Judge Foley, it subsequently became clear that he had actually been instructed by Atty. Libbin. In fact, he later admitted to the Appellate Court that Judge Foley was not actually his client and that he was actually acting under the direction of Atty. Libbin.
>
> Am I safe in assuming that you have also been instructed by Atty. Libbin? In fact, would it be a safe assumption to say that you have never actually met with or been instructed by your new supposed client, Judge Foley, just as Atty. DuBois had never actually been instructed by his claimed client? And, as it subsequently became clear, just as AAG Robert Snook had not actually been instructed by or met with his claimed client when he also filed his initial appearance on behalf of the AG?

Attorney DuBois had initially filed an appearance on behalf of Respondent. Once the Connecticut

Appellate Court discovered that he had not actually been instructed by Respondent to file an appearance, and therefore did not have his authority to enter that appearance, it ordered that

> in light of the statements by the Office of Chief Disciplinary Counsel that it is representing the Judicial Branch and as it conceded that it does not represent Judge Foley nor is Judge Foley a party to the underlying action or this appeal, the Disciplinary Counsel is ordered to file an appearance accurately reflecting its representation in this appeal.

Connecticut v. Williams, Docket No 27416 (Conn.App., 14 March 2007).

Attorney D'Auria's failure to respond to the accusation that he is also acting under the instruction of Attorney Martin Libbin plus the newly discovered facts surrounding these events and the prior history of this case made it clear that Attorney D'Auria was misrepresenting his authority when he claimed to have been instructed by Respondent. Consequently, Petitioner filed a supplemental motion asking that the Court strike Attorney D'Auria's appearance. Supplemental Motion to Strike Appearance and Waiver, 2 March 2011. Petitioner's supplemental motion complied in all respects with the Rules of the Court and was also required to be filed by the Clerk. Nonetheless, the Clerk once again neither filed the motion nor rejected and returned it.

In fact, the Clerk docketed Attorney D'Auria's appearance as being Counsel of Record for

"Connecticut" despite the State of Connecticut not actually being a respondent in this proceeding.[3]

Apparently believing that the State of Connecticut was a party to these proceedings, Senior Assistant State's Attorney Michel Lukban also entered an appearance on behalf of the Office of the Chief State's Attorney. However, the Clerk docketed Attorney Lukban's appearance as being Counsel of Record for the "Office of the Attorney General". The Clerk also misstated Attorney Lukban's employer as being the Office of the Attorney General.

Then, despite no waiver or brief actually having been received on behalf of the sole named respondent, Judge Foley, on 2 March, five days prior to the end of the response period, the Clerk distributed the Petition. See Sup.Ct.R. 15.5.

REASONS FOR GRANTING THE WRIT

A. The Clerk of this Court denied Petitioner due process of law.

The Equal Protection and Due Process Clauses of the federal constitution require that where a right of

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[3] Connecticut's Attorney General is specifically precluded from acting in criminal matters. *Blumenthal v Barnes*, 261 Conn. 434, 460, 804 A 2d 152, 168 (2002), quoting 1897 Public Act 191, § 2 ("The attorney-general shall have general supervision over all legal matters in which the state is an interested party, *except those legal matters over which the state's attorneys have direction*) (emphasis supplied in *Barnes*)

appeal is afforded, a fair procedure must be provided. *Griffin v. Illinois*, 351 U.S. 12, 18 (1956).[4]

Who would ever argue that a procedure whereby the Clerk of the Court edits and misrepresents the pleadings filed by the parties, even going to far as to misrepresent the parties, their counsel and even the relief requested, affords due process of law? And who would ever argue that a procedure whereby the Clerk of the Court blocks the filing of valid pleadings and either destroys or suppresses those pleadings rather than to return them to the party in a timely manner so as to prevent detection of his actions and prevent the parties from taking timely action based on his misconduct provides due process?

This circumstance is particularly egregious in that it is obvious that the purpose in not filing Petitioner's motions is to cover up failings within the Clerk's office so that the Court cannot become aware of these failings. In this way, the Office of the Clerk is able to defeat the Court's supervisory responsibilities over that office.

Nor is this the first time that this has happened. In prior petitions filed by Petitioner, the Clerk has also misrepresented the parties, the certiorari court and the orders of this Court. See *Williams v. District of Columbia Court of Appeals*, 552 U.S. 1141 (2008), *rehearing denied*, 552 U.S. 1305 (2008), and *Williams v. Appellate Division of the Supreme Court of the State of New York, First Judicial Department*, 553 U.S. 1018 (2008). In these two cases, the Clerk

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[4] U S Const Amend V is applicable in the federal courts, including in this Court

ignored correspondence, rejected and returned correspondence and refused to file valid motions seeking the correction of these errors. See, e.g., letters from Mr. Erik Fossum to Petitioner, 23 May and 5 June 2008. Some, but not all, of these errors were corrected only after the Honorable Joseph Courtney wrote directly to the Clerk on Petitioner's behalf seeking a response. Letter Representative Courtney to Mr. William Suter, 19 September 2008; letter Suter to Courtney, 23 December 2008.[5]

In 1923, Chief Justice Taft wrote that "[t]he jurisdiction of the Supreme Court to review cases by way of certiorari was not conferred upon this Court merely to give a defeated party ... another hearing." *Magnum Import Co. v. Coty*, 262 U.S. 159, 163 (1923). However, the presumption is that the party did at least receive a hearing below. The core role of all of our courts is to do justice. Here, where Petitioner's petition makes out a clear case of the denial of the right to be heard by state courts which clearly have an interest in the outcome of the controversy, this Court's subsequent denial of due process is particularly egregious.

B. Subsequently discovered authorities.

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[5] In the case of *Williams v Appellate Division of the Supreme Court of the State of New York, First Judicial Department*, 553 U S 1018 (2008), the Clerk continues to misstate the named respondent and continues to indicate the certiorari court as the Appellate Division of the Supreme Court of New York even though Petitioner's petition correctly sought certiorari directed to the New York Court of Appeals, which *did* address the matter on its merits See *R J Reynolds Tobacco Co*

Petitioner argues in his petition that "[i]nstitutionalized bias within the Connecticut judiciary has denied Petitioner a determination by a panel of unbiased appellate court justices and judges." Petition, pp. 14-23. In particular, Petitioner argues that Connecticut's appellate courts avoided addressing the merits of Petitioner's appeal so as to avoid consideration of any claims which might embarrass the Connecticut judiciary and result in a diminution of the judiciary's political power. Id., pp. 17-23.

Subsequent to the filing of Petitioner's petition, in an article which discussed the likely picks to fill a current vacancy on the Connecticut Supreme Court, the author wrote:

> [Superior Court Judge] Keller was the only legally-trained member of the Judicial Review Council who voted to acquit former Chief Justice William J. Sullivan, who faced charges of ethics violation after he delayed the printing of a controversial court decision in 2006 in an attempt to smooth colleague Peter T. Zarella's bid to succeed him.
>
> In Keller's support for the embattled Sullivan, and for her diligent work to improve the judicial system, Keller gained popularity among many of her peers as "a judge's judge."

Scheffery, Thomas, *Picking Judges, Building Courts*, 7 February 2011 Conn.L.Trib. Attorney Scheffery fails to attribute his claims in his article. However, he subsequently advised that the "'judge's judge' quote is from a judge who, I've found, has

consistently known the score." Email, Scheffery to Williams, 8 February 2011.

The quote demonstrates that the Connecticut judiciary functions as a unified body in which individual judges are expected to serve the common interest, and do in fact do so even to the point of it affecting their decisions in individual cases, as well as that there is a perception among members of the judiciary that such support is rewarded and that it is necessary to act in this manner if a judge wishes to advance his career. What is breathtaking is that this is spoken of as if this was acceptable way for a judge to behave rather than being a violation of a judge's ethical code of conduct. See Conn. Code of Judicial Conduct (2011), Rules 1.2, 1.3, 2.2, 2.4.

Subsequent to the filing of Petitioner's petition, Petitioner became aware of *Green Party of Connecticut v. Lenge*, Docket No. 10-795 (Sup. Ct.), which is tipped as a possible candidate for the granting of certiorari by this Court. The trial court devoted three pages and numerous footnotes to cataloguing some of Connecticut's recent corruption. See *Green Party of Connecticut v. Garfield*, 590 F. Supp. 2d 288, 304-309 (D.Ct., 2008); *Green Party of Connecticut v. Garfield*, 648 F. Supp. 2d 298, 307-309 (D.Ct., 2009) (relevant portion included in appendix). As subsequently summarized by the Second Circuit:

> Sadly, the ignominy of public corruption [in Connecticut government] was not limited to [ex-Governor] Rowland. As the District Court discussed in detail, the "Rowland scandal was but one of the many corruption scandals involving elected officials in state and local

> government that helped earn the state the nickname 'Corrupticut.'" See [648 F. Supp. 2d] at 307-08 (cataloging the scandals); see also id at 307 & n. 9 (discussing the decline of the reputation of Connecticut's state government).

Green Party of Connecticut v. Lenge, 616 F.3d 213, 219 (2nd Cir., 2010). Although the District Court limited itself to corruption scandals involving elected officials, there have been numerous other corruption scandals involving appointed state officials including at the highest level of Connecticut's judiciary. See, e.g., *Judicial Review Council, Memorandum of Decision: In re Sullivan*, 68 Conn.L.J. 24 (12 December 2006), in which then-Chief Justice William Sullivan was disciplined for engaging in cronyism. Clearly, *Green Party of Connecticut* supports Petitioner's thesis that corruption is systemic throughout Connecticut's state government.

CONCLUSION

For the foregoing additional reasons, a summary reconsideration order is appropriate in this matter. See Sup. Ct. R. 16.1. Petitioner therefore asks that this Court grant certiorari, vacate the order denying certification by the Connecticut Supreme Court and remand to the state courts for consideration.

Respectfully submitted,

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APPENDIX

A. *Green Party of Connecticut v. Garfield*, 648 F. Supp. 2d 298, 307-309 (D.Ct., 2009) (excerpt only).

1. Connecticut's Corruption Scandals

On June 21, 2004, John Rowland resigned as Governor following accusations that he had improperly accepted over $100,000 dollars worth of gifts and services from state contractors, including free or reduced vacations in Florida and Vermont, construction work on his Connecticut lake cottage, and free private jet flights to Las Vegas and Philadelphia, in exchange for facilitating the award of several state contracts. Feinberg Decl. Ex. 3. Rowland subsequently pled guilty to federal criminal charges, including federal income tax evasion and conspiracy to defraud the state and its citizens of the honest services of its Governor. Feinberg Decl. Exs. 2 & 4. In March 2005, Rowland was sentenced to a term of imprisonment of one year and a day and ordered to pay $82,000 in fines. Feinberg Decl. Ex. 4. Rowland's chief of staff, Peter Ellef, his deputy chief of staff, Lawrence Alibozek, and several state contractors, including William Tomasso and the Tunxis Management Company, also pled guilty to federal charges stemming from their roles in that corruption scandal. Feinberg Decl. Exs. 5-10.

The Rowland scandal was but one of the many corruption scandals involving elected officials in state and local government that helped earn the state the nickname "Corrupticut." *See, e.g.*, Paul von

Zielbauer, *The Nutmeg State Battles the Stigma of Corrupticut*, N.Y. Times, Mar. 28, 2003 ("Nowadays, from Storrs to Stamford, there are jokes about living in Corrupticut, Connection-icut or, the new favorite, Criminalicut.").[9]

[*308] For example, in 1999 State Treasurer Paul Silvester pled guilty to federal racketeering and money laundering charges stemming from a kick-back scheme involving state pension investments. Feinberg Decl. Ex. 11. In return for investing over $500 million of the state's pension funds with certain financial institutions, Silvester directed millions of

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[9] *See also* Feinberg Decl. Ex. 22; Marc Santora, *Political Memo; The Whiff of Corruption Persists in Connecticut*, N.Y. Times, Sept. 21, 2003 (referring to the brewing Rowland scandal, "[w]hile the investigation continues, each new development chips away at the layer of trust between Connecticut's residents and their elected officials"); Stan Simpson, *Plain Talk About Corruption*, Hartford Courant, Oct. 8, 2003, ("For its size, little Connecticut -- proportionately -- just may be the most corrupt state in the union. No longer is it a far-fetched notion to link public officials here with jail time -- or potential time."); Richard Lezin Jones, *Our Towns; Move Over, New Jersey. New Trend Puts the Con in Connecticut*, N.Y. Times, Nov. 30, 2003 (noting that the state's mounting corruption scandals "may be helping to give otherwise refined Connecticut an unexpected and unwanted mark of distinction in the region: the state with the most dysfunctional politicians"); Avi Salzman, *He's Leaving. Now the State Has to Restore its Reputation*, N.Y. Times, June 27, 2004 ("A half-decade of mounting political scandals have turned Connecticut into a punchline of political backwardness."); David A. Fahrenthold, *Political Scandals Refuse to Go Away in 'Corrupticut'; Officials' Wrongdoing Persists After Governor's 2005 Conviction*, Wash. Post, July 3, 2006 ("The past few years have revealed so many tales of graft, malfeasance and all-purpose criminality by public servants in Connecticut that it's hard to choose the most brazen.")

dollars in "finder's fees" to be paid to various friends and associates, who then funneled part of the money back to his campaign fund. Feinberg Decl. Exs. 11-17. Silvester's various schemes resulted in the convictions of many individuals and companies.[10]

In September 2005, State Senator Ernest Newton II pled guilty to federal bribery charges in connection with a kick-back scheme involving a non-profit

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[10] In September 2002, after pleading guilty to conspiracy to launder money, Peter Hirschl was sentenced to a term of imprisonment of five months, to be followed by five months of home confinement, and was ordered to pay a $15,000 fine In 2003, Frederick McCarthy, Chairman of Triumph Capital, pled guilty to corruptly rewarding a public official and was sentenced to a prison term of a year and a day. Lisa Thiesfield, one of Silvester's friends, pled guilty to corruptly aiding and abetting a public official in accepting a reward, her sentence included a six-month term of imprisonment Two other co-conspirators were convicted after a jury trial. Ben Andrews was convicted of nine counts, including bribery, mail and wire fraud, and money laundering and was sentenced to a 30-month term of imprisonment for his role in funneling the pension funds to private equity firm Landmark Partners. In addition, former assistant State Treasurer George Gomes was sentenced to two years' probation and fined $ 1,500 after pleading guilty to mail fraud for his role in the scheme. Silvester's brother, Mark Silverster, pled guilty to conspiracy to solicit and accept corrupt payments and was sentenced to a 21-month term of imprisonment and fined $40,000 In exchange for his cooperation with federal prosecutors, Christopher Stack was never charged Charles Spadoni, Triumph Capital's General Counsel, was convicted on eight counts, including racketeering, racketeering conspiracy, bribery, and wire fraud and sentenced to 36 months' imprisonment Spadoni's case remains ongoing, however In September 2008, the Second Circuit reversed and remanded for a new trial on several of those counts, determining that the government had suppressed material, exculpatory evidence *United States v Triumph Capital, Inc*, 544 F 3d 149, 152 (2d Cir 2008)

organization in Bridgeport. Feinberg Decl. Ex. 19. In return for a $5,000 bribe, Newton agreed to assist the non-profit group, Progressive Training Associates, Inc., in its quest to secure a $100,000 grant from the state. *Id.* Newton also pled guilty to federal mail fraud and income tax evasion charges for diverting $40,000 in campaign contributions to his personal use. *Id.* Newton was ultimately sentenced to 60 months in federal prison and ordered to pay over $13,000 in restitution. Feinberg Decl. Ex. 21. *See also United States v. Newton*, Case No. 3:05cr233 (AHN), 2007 U.S Dist. LEXIS 26287, 2007 WL 1098479 (D. Conn.) (denying resentencing), *aff'd*, 226 Fed. Appx. 80 (2d Cir. 2007).

Although municipal officials are not eligible to receive CEP funding, nor are they subject to the CFRA's bans on contributions and solicitations from lobbyists and contractors, corruption cases involving local officials are nevertheless still relevant to the extent that they have contributed to the atmosphere of public distrust and perceived corruption of elected officials in the state. For example, in 2003, the mayor of Bridgeport, Joseph Ganim, was convicted of federal racketeering, extortion, bribery, mail fraud, and income tax evasion arising from a scheme to award city contracts in exchange for illegal kickbacks from contractors. *United States v. Ganim*, Case No. 3:01cr263 (JBA), 2006 U.S. Dist. LEXIS 26569, 2006 WL 1210984, at *1 (D. Conn. 2006). At least three contractors also pled guilty to their role in that scheme. *United States v. Lenoci*, 377 F.3d 246, 248 (2d Cir. 2004) (noting that "Lenoci [*309] also agreed to raise funds for the mayor's anticipated campaign for governor, in return for Ganim's support for the [development project]"); *Bridgeport Harbour Place I, LLC v. Ganim*, 269 F. Supp. 2d 6, 7 (D. Conn.

2002) (noting that the three contractors "acknowledged that they corruptly provided bribes, kickbacks, and other things of value . . . in return for preferential treatment from Mayor Ganim in connection with the awarding of city contracts").[11]

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[11] In addition, though not relevant to the events leading to the passage of the CFRA, it is worth noting that corruption scandals involving municipal officials continue to roil the state. For instance, the mayor of Hartford, Eddie Perez, was recently arrested on state bribery charges stemming from allegations that he accepted $40,000 worth of home renovations in exchange for facilitating the receipt and oversight of city contracts. *See, e.g.*, Jeffrey B. Cohen and Matthew Kauffman, *Hartford Mayor Arrested on Bribery Charges*, Hartford Courant, Jan. 28, 2009. Additionally, Shelton developer James Botti is scheduled to stand trial in October 2009 on federal bribery charges stemming from allegations that he bribed an unnamed Shelton politician, described in the indictment as "Public Official # 1," in exchange for help pushing through development projects in the town. *See United States v. Botti*, Case No. 3:08cr230(CSH), 2009 U.S. Dist. LEXIS 88495 (D. Conn.).